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IN SENATE OF THE UNITED STATES.

APRIL 28, 1836.

Read, ordered to be printed, and that 3,000 additional copies be sent to the Senate.

Mr. RUGGLES made the following

REPORT,

WITH SENATE BILL NO. 239.

The select committee appointed to take into consideration the state and condition of the Patent Office, and the laws relating to the issuing of patents for new and useful inventions and discoveries, submit the following report :

The promotion of the arts and the improvement of manufactures, are the objects aimed at in granting patents for inventions. All civilized nations have provided in some form for the encouragement of inventive genius. England, from whom we derived, originally, most of our notions of national polity, and who has hitherto been considered the "queen of arts," is in no small degree indebted for the distinction, to the liberality with which she has always rewarded genius and science for their inventions and discoveries. Individual munificence and the patronage of wealthy associations, have there, as in France and Germany, done much to supply whatever was wanting in the liberality of the Government. But such patronage is necessarily partial in its operation. It is limited to particular objects, if not to particular individuals. There appears to be no better way of measuring out appropriate rewards for useful inventions, than, by a general law, to secure to all descriptions of persons, without discrimination, the exclusive use and sale, for a given period, of the thing invented. In this way they will generally derive a just and appropriate encouragement proportioned to the value of their respective inventions. It is not at this day to be doubted that the evil of the temporary monopoly is greatly overbalanced by the good the community ultimately derives from its toleration.

The granting of exclusive privileges was in England originally assumed as a prerogative of the Crown, from which it derived a revenue. It was at first limited to the introduction of manufactures from other countries. Afterwards like privileges were granted for new inventions made within the realm. Like all other regal prerogatives, it was subject to abuse, and Parliament found it necessary to limit and restrain it. This was done by the famous statute of monopolies, passed in the reign of James I, which defined the King's prerogative in respect to the de-

scription of grants which might legally be made, and among them were patents for inventions and new manufactures. The very brief reservation of right in the Crown contained in that statute, and the judicial decisions in cases arising under the grants of privileges made pursuant to it, constituted the whole of the English law on the subject up to 1835, when a law was passed by Parliament giving the right to file a disclaimer in certain cases, and containing some other less material provisions.

It is from those judicial decisions that we have derived most of the principles on which our laws on the subject are founded, and which have entered into and influenced the judicial expositions given to them. But the decisions of our courts have been characterized by a more enlightened and liberal application of equitable principles to cases of this description, in a just endeavor to sustain patents for meritorious inventions, instead of seeking to find, in the technicalities of law, a pretext for setting them aside.

Prior to the adoption of the Federal constitution, the States, within their narrow limits, could give very little encouragement to inventors by grants of exclusive privileges; and up to that time the arts had made very little progress on this side of the Atlantic. By the constitution of the United States that power was wisely vested in Congress.

The first act of Congress on the subject was passed in 1790. It authorized the Secretary of State, Secretary of War and the Attorney General, or any two of them, on application, to grant patents for such new inventions and discoveries as they should deem "*sufficiently useful and important.*" Under that act the board so constituted exercised the power of refusing patents for want of novelty in the invention or of sufficient utility and importance. This act extended the same privilege to aliens as to citizens. In 1793, it was repealed, and another act passed, authorizing patents to citizens of the United States only, to be granted by the Secretary of State, subject to the revision of the Attorney General. In 1800, the privilege to take out patents was extended to aliens who have resided two year in this country, and made oath of their intention of becoming citizens of the United States.

The act of 1793, which is still in force, gives, according to the practical construction it has received, no power to the Secretary to refuse a patent for want of either novelty or usefulness. The only inquiry is whether the terms and forms prescribed are complied with. The granting of patents therefore is but a ministerial duty. Every one who makes application is entitled to receive a patent by paying the duty required, and making his application and specification in conformity with the law. The necessary consequence is, that patents have, under the act of 1793, been daily granted without regard to the question of novelty, or even utility in the ordinary sense; for it has been settled that the term useful, as used in this statute, is only in contradistinction to hurtful, injurious, or pernicious. This construction (that no right is conferred to refuse a patent) has been given to the law by the Department charged with the duty of granting patents, not so much probably from any necessary and unavoidable import of the terms of it, as from a disinclination to exercise a power of so much importance, in cases where it is not clearly and distinctly granted. And it may be reasonably doubted whether it was the intention of Congress to confer such a power on the Secretary of State

alone, since no provision is made for an appeal or other remedy for an incorrect decision adverse to the applicant. Besides, any person occupying that station might be supposed as little qualified by an acquaintance with the appropriate branches of science or of the arts, to decide such questions, as any other officer of the Government. And were he to undertake the task of such an examination as would be necessary to a decision in each case, he would have little time for other official duties.

Under the act referred to, the Department of State has been going on for more than forty years, issuing patents on every application, without any examination into the merit or novelty of the invention. And the evils which necessarily result from the law as it now exists, must continue to increase and multiply daily till Congress shall put a stop to them. Some of them are as follows :

1. A considerable portion of all the patents granted are worthless and void, as conflicting with, and infringing upon one another, or upon, public rights not subject to patent privileges ; arising either from a want of due attention to the specifications of claim, or from the ignorance of the patentees of the state of the arts and manufactures, and of the inventions made in other countries, and even in our own.

2. The country becomes flooded with patent monopolies, embarrassing to bona fide patentees, whose rights are thus invaded on all sides ; and not less embarrassing to the community generally, in the use of even the most common machinery and long-known improvements in the arts and common manufactures of the country.

3. Out of this interference and collision of patents and privileges, a great number of lawsuits arise, which are daily increasing in an alarming degree, onerous to the courts, ruinous to the parties, and injurious to society.

4. It opens the door to frauds, which have already become extensive and serious. It is represented to the committee that it is not uncommon for persons to copy patented machines in the model-room ; and, having made some slight immaterial alterations, they apply in the next room for patents. There being no power given to refuse them, patents are issued of course. Thus prepared, they go forth on a retailing expedition, selling out their patent rights for States, counties, and townships, to those who have no means at hand of detecting the imposition, and who find, when it is too late, that they have purchased what the vendors had no right to sell, and which they obtain thereby no right to use. This speculation in patent rights has become a regular business, and several hundred thousand dollars, it is estimated, are paid annually for void patents, many of which are thus fraudulently obtained.

In this collision and interference of patents, the original and meritorious inventor sees his invention, to the perfection of which he has devoted much time and expense, pirated from him, and he must forego the reward which the law was intended to secure to him in the exclusive right it grants ; or he must become involved in numerous and expensive lawsuits in distant and various sections of the country, to protect and confirm his rights. If he be wise, he will generally avoid the latter, and submit to the former alternative of injustice, to which the Government, as the law now is, makes itself accessory. The practice is scarcely less reprehensible, of taking out patents for what has been long in public use, and what

every one has therefore a right to use. The patentee in such cases being armed with the apparent authority of the Government, having the sanction of its highest officers the seal of state, scours the country, and by threats of prosecution, compels those who are found using the thing patented, to pay the patent price or commutation tribute. This exaction, unjust and iniquitous as it is, is usually submitted to.

The extent of the evils resulting from the unrestrained and promiscuous grants of patent privileges, may be imagined, when it is considered that there are now issued, since this year commenced, at the rate of more than a thousand a year; a considerable portion of which are doubtless void for want of originality in the inventions patented, either in whole or in some of the parts claimed as new.

A necessary consequence is, that patents even for new and meritorious inventions are so much depreciated in general estimation that they are of but little value to the patentees, and the object of the patent laws, that of promoting the arts by encouragement, is in a great measure defeated.

To prevent these evils in future is the first and most desirable object of a revision and alteration of the existing laws on this subject. The most obvious, if not the only means of effecting it, appears to be to establish a check upon the granting of patents, allowing them to issue only for such inventions as are in fact new and entitled, by the merit of originality and utility, to be protected by law. The difficulty encountered in effecting this, is in determining what that check shall be; in whom the power to judge of inventions before granting a patent can safely be reposed, and how its exercise can be regulated and guarded, to prevent injustice through mistake of judgment or otherwise, by which honest and meritorious inventors might suffer wrong.

It is obvious that the power must, in the first instance, be exercised by the department charged with this branch of the public service. But as it may not be thought proper to intrust its final exercise to the department, it is deemed advisable to provide for an occasional tribunal to which an appeal may be taken. And as a further security against any possible injustice, it is thought proper to give the applicant in certain cases, where there may be an adverse party to contest his right, an opportunity to have the decision revised in a court of law.

The duty of examination and investigation necessary to a first decision at the Patent Office, is an important one, and will call for the exercise and application of much scientific acquirement and knowledge of the existing state of the arts in all their branches, not only in our own, but in other countries. Such qualifications in the officers charged with the duty, will be the more necessary and desirable, because the information upon which a rejection is made at the office, will be available in the final decision. It becomes necessary, then, to give to the Patent Office a new organization, and to secure to it a character altogether above a mere clerkship. The competency and efficiency of its officers should correspond with their responsibility, and with the nature and importance of the duties required of them. When the existing organization was adopted, the granting of patents was a matter of little importance, compared with what it now is. The arts in this country were but little understood, and but little cultivated. Agriculture and commerce constituted our principal business. We had few manufactures, except those

of a domestic character, adapted to ordinary domestic wants. Our workshops were in Europe. Enterprise, in this country, ran in other channels. The war of 1812 gave it a new direction, and a new impulse, by creating an occasion for workshops of our own. Necessity became the mother of invention, and American manufactures sprang into existence as by enchantment. Their rise and progress may be dated from that period; and a more rapid advancement in the arts, and a more astonishing development of human ingenuity, have never taken place in any other age or country. This remark will appear far from extravagant to every one who will take the trouble to examine the subject. This awakening of dormant genius to a practical and active existence, next to the arousing of the political and patriotic energies of the Union, was one of the great results of that contest. It opened to the country a new era. The nation entered upon a new existence. And since that period, American industry and enterprise, guided by American ingenuity and intellect, have achieved what would have taken Europe a century to accomplish. She has become all at once a manufacturing, as well as an agricultural and commercial nation. The useful arts have been cultivated with a success before unexampled, and have contributed, in no small degree, to the wonderful improvements which have spread themselves over our whole country. Who can predict the results, even in a few years, of that spirit of enterprise which pervades the Union, when, aided by the Genius of Invention, and propelled onward by powers which she alone can bring into exercise? The very elements are submissive to her will, and all the endless combinations of mechanism are subservient to her purposes. She participates in almost every business and employment of man. Agriculture itself might as well dispense with fertility of soil, as with her aid in its cultivation.

The greatly increasing number of patents granted, affords some indication of the improvements which have been going on in the useful arts from year to year. The average number issued annually, from 1790 to 1800, was but 26; from 1800 to 1810, the average number was 91; from 1810 to 1820, it was 200; and, for the last ten years, the average number has been 535. During the last year, there were issued 776; and there have been granted in the first quarter of the present year 274, being more in three months than were issued in the whole of the first period of ten years. In the 22 years preceding the war of 1812, the average annual number was 73. The first quarter of the present year indicates an aggregate for the year, of 1,096; the amount of the duties on which will be upwards of \$32,000. The whole number issued at the Patent Office, under the laws of the United States, up to the 31st of March last, is 9,731. This is more than double the number which have been issued either in England or France, during the same period. In England for ten years preceding 1830, the average number of patents granted in one year was 145.

Whoever imagines that, because so many inventions and so many improvements in machinery have been made, there remains little else to be discovered, has but a feeble conception of the infinitude and vastness of mechanical powers, or of the unlimited reach of science. Much as has been discovered, infinitely more remains unrevealed. The ingenuity of man is exploring a region without limits, and delving in a mine

whose treasures are exhaustless. "Neither are all the mysteries of nature unfolded, nor the mind tired in the pursuit of them."

The first conceptions of ingenuity, like the first suggestions of science, are theories which require something of experiment and practical exemplification to perfect. Mechanical inventions are at first necessarily crude and incomplete. Time is required to develop their imperfections and to make the improvements necessary to their adaptation to practical uses. Inventors generally obtain patents before they venture upon those experiments which only can test their inventions. They are apprehensive of being forestalled in their discoveries, and see no other means of protecting themselves against piracy and fraud, than by securing patents at once.

A remedy for this may be easily had in a provision authorizing caveats to be filed in the office, giving security to the right of discovery for a time sufficient for making the necessary experiments, inquiries and improvements.

Heretofore aliens not resident in this country, have not been admitted to the privileges of our patent laws. But, as American citizens are allowed to take out patents in England and in other countries, a principle of reciprocity would seem to require that foreigners should have similar privileges here, on paying a similar duty or amount of fees that is exacted of our citizens abroad. The fees payable in England, on taking out a patent, amount to \$585. If a patent be taken out for the three kingdoms of England, Ireland, and Scotland, they amount to \$1,680. In France they are \$309; in Spain \$292; Austria, \$208.

A power in the Commissioner of the Patent Office to reject applications for want of novelty in the invention, it is believed, will have a most beneficial and salutary effect in relieving meritorious inventors, and the community generally, from the serious evils growing out of the granting of patents for every thing indiscriminately, creating interfering claims, encouraging fraudulent speculators in patent rights, deluging the country with worthless monopolies, and laying the foundation for endless litigation.

In nineteen cases out of twenty, probably, the opinion of the Commissioner, accompanied by the information on which his decision is founded, will be acquiesced in. When unsatisfactory, the rights of the applicant will find ample protection in an appeal to a board of examiners, selected for their particular knowledge of the subject-matter of the invention in each case.

By this means, without danger to actual and honest inventors, the number of patents would be somewhat diminished. But there would be more confidence in those which should be granted, and as those which have been heretofore issued, should be daily expiring by their limitation, the community would begin to feel and realize the advantages of such a change. The present law waits till infringements and frauds are consummated—nay, it even aids them; and then it offers an inadequate remedy for the injury, by giving an action for damages. It ought, rather, by refusing to grant interfering patents, to render prosecutions unnecessary. Instead of sanctioning the wrong by granting the privilege to commit it, it should arrest injury and injustice at the threshold, and put an end to litigation before it begins.

Important and interesting as the Patent Office is now considered, it is

believed that, under such new organization as is contemplated by the bill presented herewith, it will contribute largely to the great interests of the country, and bear no small part in elevating our national character. American ingenuity has obtained much consideration on the other side of the Atlantic. Even the manufactures of England are not a little indebted to it for some of their most valuable improvements. Her woollen manufactures, especially, have, within a few years, undergone an entire change, by the adoption of American inventions, by which wool has been made as yielding and submissive to the power of machinery as any material whatever. Cotton machinery has also been greatly improved in the hands of our mechanics; and while England receives from us three-fourths of the cotton she uses in raw material, we furnish her also with some of the most valuable improvements in the means of manufacturing it. Indeed, what mechanism or manufacture has, for the last twenty years, been brought across the Atlantic, that has not, on being returned, borne the distinguishing marks of the superior ingenuity of American mechanists? Formerly, we borrowed and copied much that was valuable from Europe. Now, Europe is borrowing and copying, with no little advantage, from us; and she must not be too much surprised if she shall soon find a formidable balance against her.

To carry fully into effect the objects which have been had in view, it will be necessary to provide larger and more commodious rooms for models, &c., than those now occupied for that purpose. They are insufficient for the models of machinery and other inventions now deposited there, and the number will be increasing several hundred, perhaps a thousand, every year. A great number, supposed to be about five hundred, from a want of room for them elsewhere, have been stowed away in a dark garret. Those which occupy the rooms designed for them, are crowded together in a manner unfavorable for exhibition or examination. In such a situation, it is impossible to give them any systematic or scientific arrangement. This disorder and confusion must necessarily be increased by the addition of those hereafter furnished, or they must be consigned to the garret, the common receptacle, where, instead of promoting a taste for, and facilitating the study of, the useful arts, they will only afford evidence of the improvidence of the Government. In addition to this, the present building is too much exposed to destruction by fire. The loss of the records and drawings and of the several thousands of interesting and valuable models now preserved there, would be, in a great degree, irreparable. There is no additional room to be had in the building they now occupy. The Post Office Department, in the same building, instead of having any room to spare which is now appropriated to it, requires a considerable extension of accommodations, from its increased and increasing business. It needs the whole building. The only way, therefore, of providing the necessary extension of room for the accommodation of the Post Office Department, and the city post office, and of providing the requisite accommodations for the Patent Office, is to erect a suitable fire-proof building for the latter on some one of the public lots. There are ample funds arising from duties on patents, heretofore paid into the Treasury, to the account of clerk hire in that office, which remain unexpended. A portion of that surplus fund, being now about \$152,000, may well be appro-

priated to the construction of a building which should be commodious and comparatively safe from fire.

Such a building as this branch of the public interests requires, would do honor to the Government and the country. The Patent Office, with such accommodations, containing the records of this age of inventions, displaying in its halls and galleries numberless models of ingenious and useful mechanism, and contrivances in almost infinite variety, adapted to the mechanic arts, to manufactures, to husbandry, to navigation, steam power, horse power, water power, railroad transportation, and, in fine, to all the common trades and mechanical pursuits of life, as well as to our rapidly multiplying and magnificent public works, would present an object of great interest and tend not a little to elevate our national character. It has been justly remarked that we can go into no mechanic shop, into no manufactory of any description, upon no farm or plantation, or travel a mile on our railroads or in our steamboats, without seeing the evidence of our originality, and witnessing the fruits and effects of our ingenuity and enterprise. All the inventions and improvements in mechanism which have done so much towards advancing the useful arts and manufactures, should, as far as practicable, be exhibited in one view in the halls of the Patent Office. Such a display would attract the attention of the many thousands who annually visit the capital of the Union from all quarters of the country, and all parts of the world. No other nation has yet any thing to be compared with it; neither England nor France has ever required models to be deposited of patented machinery. Collections of models and drawings have sometimes been made by private associations, but they are small in number compared with those we possess.

In addition to the models of machinery, it is proposed to embrace an exhibition of specimens of useful and elegant fabrics and of works of art, which manufacturers and artificers may place there for that purpose. It might, too, embrace a cabinet of interesting minerals, which may be received from time to time from the various parts of our widely-extended country, with polished specimens of its beautiful marbles from their different locations, illustrating the geology and many of the natural resources of the country; and, also, a collection of Indian curiosities and antiquities, many of which are now in the possession of one of the Departments, boxed up for want of some suitable place for their exhibition.

In short, the halls of the Patent Office should present a national museum of the arts, and be a general repository of all the inventions and improvements in machinery and manufactures, of which our country can claim the honor; together with such other objects of interest as might conveniently and properly be placed under the superintendence of the Commissioner. Such an institution, while it would be an object of just pride to every American, would have scarcely less influence in advancing and accelerating the progress of the useful arts and the improvement of our manufactures, than would even the encouragement afforded by granting patents for inventions or establishing high tariffs of protection.

With these views, the committee cannot hesitate to recommend an entire reorganization of the Patent Office, and several material alterations in our law of patents, suiting it to the present condition of the arts and the altered circumstances of the country.

A bill in conformity with their views is herewith submitted.

A BILL to promote the progress of useful arts, and to repeal all acts and parts of acts heretofore made for that purpose.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be established, and attached to the Department of State, an office to be denominated the Patent Office ; the chief officer of which shall be called the Commissioner of Patents, to be appointed by the President, by and with the advice and consent of the Senate, whose duty it shall be, under the direction of the head of the Department, to superintend, execute, and perform, all such acts and things touching and respecting the granting and issuing of patents for new and useful discoveries, inventions, and improvements as are herein provided for, or shall hereafter be, by law, directed to be done and performed, and shall have the charge and custody of all the books, records, papers, models, machines, and all other things belonging to said office. And said Commissioner shall receive the same compensation as is allowed by law to the Commissioner of the Indian Department.

SEC. 2. *And be it further enacted,* That there shall be, in said office, an inferior officer, to be appointed by the said principal officer, with the approval of the Secretary of State, and to be called the Chief Clerk of the Patent Office ; who, in all cases during the necessary absence of the Commissioner, or when the said principal office shall become vacant, shall have the charge and custody of the seal, and of the records, books, papers, machines, models, and all other things belonging to the said office. And the said Commissioner may also, with like approval, appoint two other clerks, an examiner of patents, a draughtsman, a machinist, and a messenger. The said chief clerk shall receive the annual salary of seventeen hundred dollars ; two other clerks, twelve hundred and fifty dollars each ; examiner, fifteen hundred dollars ; draughtsman, twelve hundred and fifty dollars ; machinist, one thousand dollars ; and the messenger five hundred dollars.

SEC. 3. *And be it further enacted,* That the said principal officer, and every other person to be appointed in the said office, shall, before he enters upon the duties of his office or appointment, make oath or affirmation truly and faithfully to execute the trust committed to him. And the said Commissioner and the chief clerk shall also, before entering upon their duties, severally give bonds with sureties to the Treasurer of the United States, each in the sum of ——— dollars, with condition to render a true and faithful account to him or his successor in office, quarterly, of all moneys which shall be by them respectively received for duties on patents, and for copies of records and drawings, and all other moneys received by virtue of such office.

SEC. 4. *And be it further enacted,* That the said Commissioner shall cause a seal of office to be made and provided for the said office, with such device as the President of the United States shall approve ; and copies of any records, books, papers, or drawings, belonging to the said office, under the signature of the said Commissioner, or, when the office shall be vacant, under the signature of the chief clerk, with the said seal affixed, shall be competent evidence in all cases in which the original records, books, papers, or drawings, would be evidence. And any person making application therefor may have certified copies of the records, drawings, and other papers deposited in said office, on paying, for

the written copies, the sum of ten cents for every page of one hundred words; and for copies of drawings, the reasonable expense of making the same.

SEC. 5. *And be it further enacted*, That all patents issuing from said office shall be issued in the name of the United States, and under the seal of said office, and be signed by the Secretary of State, and countersigned by the Commissioner of said office, and shall be recorded, together with the descriptions, specifications, and drawings, in the said office, in books to be kept for that purpose. Every such patent shall contain a short description of the invention or discovery, and in its terms grant to the applicant or applicants, his or their heirs, administrators, executors, or assigns, for a term not exceeding fourteen years, the full and exclusive right and liberty of using, and vending to others to be used, the said invention or discovery, referring to the specifications for the particulars thereof, a copy of which shall be annexed to the patent, specifying what the patentee claims as his invention or discovery.

SEC. 6. *And be it further enacted*, That any person or persons having discovered or invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use or on sale, with his consent or allowance as the inventor or discoverer; and shall desire to obtain an exclusive property therein, may make application in writing to the Commissioner of Patents, expressing such desire, and the Commissioner, on due proceedings had, may grant a patent therefor. But before any inventor shall receive a patent for any such new invention or discovery, he shall deliver a written description of his invention or discovery, and of the manner and process of making, constructing, using, and compounding the same, in such full, clear, and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of any machine, he shall fully explain the principle and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions; and shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery. He shall, furthermore, accompany the whole with a drawing, or drawings, and written references, where the nature of the case admits of drawings, or with specimens of ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention or discovery is of a composition of matter; which descriptions and drawings, signed by the inventor, and attested by two witnesses, shall be filed in the patent office; and he shall moreover furnish a model of his machine, in all cases which admit of a representation by model, of a convenient size to exhibit advantageously its several parts. The applicant shall also make oath or affirmation that he does verily believe that he is the original inventor or discoverer of the art, machine, composition, or improvement, for which he solicits a patent, and that he does not know or believe that

he same was ever before known or used ; which oath or affirmation may be made before any person authorized by law to administer oaths.

SEC. 7. *And be it further enacted*, That, on the filing of any such application, description, and specification, and the payment of the duty hereinafter provided, the Commissioner shall make, or cause to be made, an examination of the alleged new invention or discovery ; and if, on any such examination, it shall not appear to the Commissioner that the same had been known and used prior to such alleged discovery thereof by the applicant, or had been in public use or on sale with his consent or allowance prior to the application, if he shall deem it to be sufficiently useful and important, it shall be his duty to issue a patent therefor. But whenever, on such examination, it shall appear to the Commissioner that the applicant was not the original inventor or discoverer thereof, or that any part of that which is claimed as new had before been known and used as aforesaid, or that the description is defective and insufficient, he shall notify the applicant thereof, giving him, briefly, such information as may be useful in judging of the propriety of renewing his application, or of altering his specification to embrace only that part of the invention or discovery which is new. In every such case, if the applicant shall elect to withdraw his application, he shall be entitled to receive back ——— dollars, part of the duty required by this act, on filing a notice in writing of such election in the Patent Office, a copy of which, certified by the Commissioner, shall be a sufficient warrant to the Treasurer for paying back to the said applicant the said sum of ——— dollars. But if the applicant in such case shall persist in his claim for a patent, with or without any alteration of his specification, he shall be required to make oath or affirmation anew, in manner as aforesaid. And if the specification and claim shall not have been so modified as, in the opinion of the Commissioner, shall entitle the applicant to a patent, he may, on appeal, and upon request in writing, have the decision of a board of examiners, to be composed of three disinterested persons, who shall be appointed for that purpose by the Secretary of State, and to be selected for their knowledge and skill in the particular art, manufacture, or branch of science to which the alleged invention appertains ; who shall be furnished with a certificate in writing, of the opinion and decision of the Commissioner, stating the particular grounds of his objection, and the part or parts of the invention which he considers as not entitled to be patented. And the said board shall give reasonable notice to the applicant, as well as to the Commissioner, of the time and place of their meeting, that they may have an opportunity of furnishing them with such facts and evidence as they may deem necessary to a just decision ; and it shall be the duty of the Commissioner to furnish to the board of examiners such information as he may possess relative to the matter under their consideration. And on an examination and consideration of the matter by such board, it shall be in their power, or of a majority of them, to reverse the decision of the Commissioner, either in whole or in part ; and their opinion being certified to the Commissioner, he shall be governed thereby, in the further proceedings to be had on such application : *Provided, however*, That before a board shall be instituted in any such case, the applicant shall pay to the Commissioner the sum of ——— dollars, which shall be in full compen-

sation to the persons who may be so appointed, for their examination and certificate as aforesaid.

SEC. 8. *And be it further enacted*, That whenever an application shall be made for a patent, which, in the opinion of the Commissioner would interfere with any other patent for which an application may be pending, or with any unexpired patent which shall have been granted, it shall be the duty of the Commissioner to give notice thereof to such applicants, or patentees, as the case may be; and if either shall be dissatisfied with the decision of the Commissioner on the question of priority of right or invention, he may appeal from such decision, on the like terms and conditions as are provided in the preceding section of this act; and the like proceedings shall be had to determine which, or whether either of the applicants is entitled to receive a patent as prayed for.

SEC. 9. *And be it further enacted*, That before any application for a patent shall be considered by the Commissioner as aforesaid, the applicant shall pay into the Treasury of the United States, or into the Patent Office, or into any of the deposite banks, to the credit of the Treasury, if he be a citizen of the United States, or an alien and shall have been resident in the United States for one year next preceding, and shall have made oath of his intention to become a citizen thereof, the sum of forty dollars; if a subject of the King of Great Britain, the sum of five hundred dollars; and all other persons the sum of three hundred dollars; for which payment duplicate receipts shall be taken, one of which to be filed in the office of the Treasurer. And the moneys received into the Treasury under this act, shall constitute a fund for the payment of the salaries of the officers and clerks herein provided for, and all other expenses of the Patent Office, and to be called the patent fund.

SEC. 10. *And be it further enacted*, That where any person hath made, or shall have made, any new invention, discovery, or improvement, on account of which a patent might by virtue of this act be granted, and such person shall die before any patent shall be granted therefor, the right of applying for and obtaining such patent, shall devolve on the executor or administrator of such person, in trust for the heirs at law of the deceased, in case he shall have died intestate; but if otherwise, then in trust for his devisees, in as full and ample manner, and under the same conditions, limitations, and restrictions, as the same was held, or might have been claimed or enjoyed by such person in his or her lifetime; and when application for a patent shall be made by such legal representatives, the oath or affirmation provided in the third section of the before-mentioned act, shall be so varied as to be applicable to them.

SEC. 11. *And be it further enacted*, That every patent issued in pursuance of this act shall be assignable in law, either as to the whole interest, or any undivided part thereof, by any instrument in writing; which assignment shall be recorded in the Patent Office within three months from the execution thereof, for which the assignee shall pay to the Commissioner the sum of ——— dollars.

SEC. 12. *And be it further enacted*, That any citizen of the United States, or alien who shall have been resident in the United States one year next preceding, and shall have made oath of his intention to become a citizen thereof, who shall have invented any new art, machine, or improvement thereof, and shall desire further time to mature the same,

may file in the Patent Office a caveat setting forth the design and purpose thereof, and its principal and distinguishing characteristics, and praying protection of his right, till he shall have matured his invention; which caveat shall be filed in the confidential archives of the office, and preserved in secrecy. And if application shall be made by any other person within one year from the time of filing such caveat, for a patent of any invention with which it may in any respect interfere, it shall be the duty of the Commissioner to give notice to the person filing the caveat of such application and of such supposed interference, who shall, within two months after receiving the notice, if he would avail himself of the benefit of his caveat, file his description, specifications, drawings, and model; and if, in the opinion of the Commissioner, the specifications of claim interfere with each other, like proceedings may be had in all respects as are in this act provided in the case of interfering applications: *Provided, however,* That no opinion or decision of any board of examiners, under the provisions of this act, shall preclude any person interested in favor of or against the validity of any patent which has been or may hereafter be granted, from the right to contest the same in any judicial court having jurisdiction of the subject-matter.

SEC. 13. *And be it further enacted,* That whenever any patent which has heretofore been granted, or which shall hereafter be granted, shall be inoperative or invalid, by reason of a defective or insufficient description or specification, or by reason of the patentee claiming in his specification as his own invention, more than he had or shall have a right to claim as new; if the error has, or shall have arisen by inadvertency, accident or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the Commissioner, upon the surrender to him of such patent, and the payment of the further duty of fifteen dollars, to cause a new patent to be issued to the said inventor, for the same invention, for the residue of the period then unexpired for which the original patent was granted, in accordance with the patentee's corrected description and specification. And in case of his death, or any assignment by him made of the original patent, a similar right shall vest in his executors, administrators, or assignees. And the patent, so re-issued, together with the corrected description and specification, shall have the same effect and operation in law, on the trial of all actions relative to the violation of such invention, as though the same had been originally filed in such corrected form, before the serving out of the original patent. And whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications, and on the payment of fifteen dollars, as hereinbefore provided, have the same annexed to the original description and specification; and the Commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded; and the same shall thereafter stand on the same footing to all intents and purposes as though it had been embraced in the original description and specification.

SEC. 14. *And be it further enacted,* That whenever in any action for damages for using or selling the thing whereof the exclusive right is

secured by any patent heretofore granted, or by any patent which may hereafter be granted, a verdict shall be rendered for the plaintiff in such action, it shall be in the power of the court to render judgment for any sum above the amount found by such verdict as the actual damage sustained by the plaintiff, not exceeding three times the amount thereof according to the circumstances of the case; and such damages may be recovered by action on the case in any court of competent jurisdiction.

SEC. 15. *And be it further enacted*, That the defendant in any such action shall be permitted to plead the general issue, and to give this act and any special matter in evidence of which notice in writing may have been given to the plaintiff or his attorney, thirty days before trial, tending to prove that the description and specification filed by the plaintiff does not contain the whole truth relative to his invention or discovery, or that it contains more than is necessary to produce the described effect, which concealment or addition shall fully appear to have been made for the purpose of deceiving the public; or that the thing patented was not originally discovered by the patentee, or had been in use, or had been described in some public work anterior to the supposed discovery thereof by the patentee, or had been in public use or sold with the consent and allowance of the patentee before his application for a patent; or that he had surreptitiously or unjustly obtained a patent for that which was in fact invented or discovered by another; or that the patentee, if an alien at the time the patent was granted, had failed and neglected, for the space of eighteen months from the date of the patent, to put in operation and use in the United States, and put on sale to the citizens thereof, on reasonable terms, the invention or discovery for which the patent issued, or in case the same, for any period of eighteen months after it shall have been put in operation and use, shall cease to be so used or put on sale in either of which cases judgment shall be rendered for the defendant with costs: *Provided, however*, That whenever the plaintiff shall fail to sustain his action on the ground that, in his specification of claim is embraced more than that of which he was the first inventor, if it shall appear that the defendant had used or violated any part of the invention justly and truly specified and claimed as new; it shall be in the power of the court to adjudge and award as to costs as may appear to be just and equitable.

SEC. 16. *And be it further enacted*, That whenever there shall be two interfering patents, or whenever a patent on application shall have been refused on an adverse decision of a board of examiners on the ground that the patent applied for would interfere with an unexpired patent previously granted, any person interested in any such patent either by assignment or otherwise, in the one case, and any such applicant in the other case, may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge and declare either of the patents void in the whole or in part, and may also adjudge that such applicant is entitled according to the principles and provisions of this act, to have and receive a patent for his invention as specified in his claim, or for any part thereof as the fact of priority of right or invention shall in any such case be made to appear. And such adjudication, if it be in favor of the right of such applicant, shall authorize the Commissioner to issue such

patent, on his filing a copy of the adjudication and otherwise complying with the requisitions of this act. *Provided, however,* that no such judgment or adjudication shall effect the rights of any person except the parties to the action and those deriving title from or under them subsequent to the rendition of such judgment.

SEC. 17. *And be it further enacted,* That all actions, suits, controversies, and cases arising under any law of the United States granting or confirming to inventors the exclusive right to their inventions or discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court, which courts shall have power, upon bill in equity filed by any party aggrieved in any such case, to grant injunctions according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor as secured to him by any law of the United States, on such terms and conditions as said courts may deem reasonable: *Provided, however,* That from all judgments and decrees of any such court rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the Supreme Court of the United States, in the same manner and under the same circumstances as is now provided by law in other judgments and decrees of circuit courts, and in all other cases in which the court shall deem it reasonable to allow the same.

SEC. 18. *And be it further enacted,* That there shall be provided for the use of said office, a library of scientific works and periodical publications, both foreign and American, calculated to aid and facilitate the discharge of the duties hereby required of the chief officers therein, to be purchased under the direction of the Committee of the Library of Congress. And the sum of ——— dollars annually is hereby appropriated for that purpose, to be paid out of the patent fund.

SEC. 19. *And be it further enacted,* That it shall be the duty of the Commissioner to cause to be classified and arranged, in such rooms or galleries as may be provided for that purpose, in suitable cases, when necessary for their preservation, and in such manner as shall be conducive to a beneficial and favorable display thereof, the models and specimens of compositions and of fabrics and other manufactures and works of art, patented or unpatented, which have been or shall hereafter be deposited in said office. And said rooms or galleries shall be kept open during suitable hours for public inspection.

SEC. 20. *And be it further enacted,* That all acts and parts of acts heretofore passed on this subject be, and the same are hereby, repealed: *Provided, however,* That all actions and processes in law or equity sued out prior to the passage of this act, may be prosecuted to final judgment and execution, in the same manner as though this act had not been passed, excepting and saving the application to any such action, of the provisions of the fourteenth and fifteenth sections of this act, so far as they may be applicable thereto.

